

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEE G. LAWRENCE and J. CLARKE STEVENS

MAILED

MAR 25 2004

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2002-2127
Application No. 09/378,674

ON BRIEF

Before THOMAS, HAIRSTON and KRASS, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 11-16 and 18.

The invention is directed to the manipulation of broadcast signals. In particular, a headend buffered storage queue is employed in order to make multiple streams available to an end user.

Reference is made to representative independent claim 11, illustrative of the invention, reproduced as follows:

Claim 11. A method for manipulating a broadcast signal in a communication system including a headend that receives the

broadcast signal and that sends programming to a plurality of hubs with each hub sending the programming to at least one node that distributes the programming to end users, the method comprising:

receiving the signal at the headend;

establishing a buffered storage queue at the headend that receives the signal; and

transmitting a stream from the headend, the stream passing through a hub and through a node to reach an end user, the stream being derived from the signal, and the stream originating from a user selected playback point in the buffered storage queue.

The examiner relies on the following references:

Logan et al. (Logan)	5,371,551	Dec. 6, 1994
Lawrence et al. (Lawrence)	5,555,277	Sep. 10, 1996
Atalla (Atalla)	5,832,287	Nov. 3, 1998

Claims 11-16 and 18 stand rejected under 35 U.S.C. §103. As evidence of obviousness, the examiner offers Atalla¹ and Lawrence with regard to claims 11-15 and 18, adding Logan to this combination with regard to claim 16.

¹While the examiner indicates, and appellants apparently agree, that Atalla refers to U.S. Patent No. 5,477,263, the patentee associated with that patent number is, in fact, "O'Callaghan et al." However, we will presume that both appellants and the examiner meant to refer to Atalla, U.S. Patent No. 5,832,287 and that it is Atalla which is used as a reference against the instant claims.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

We note at the outset that, in accordance with appellants' grouping of the claims, at page 5 of the brief, all claims will stand or fall together. Accordingly, we will focus on independent claim 11.

In rejecting claims under 35 U.S.C. §103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teachings, suggestions or implications in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR 1.192 (a)].

It is the examiner's position that Atalla discloses the receipt of a signal at a headend (Figure 2, column 2, lines 2-17, column 3, lines 16-46, signal on link 34 is transmitted to community center 10 or headend); the establishment of a buffered storage queue at the headend that receives the signal (column 3, lines 16-46, column 4, lines 32-67); the transmission of a stream from the headend (Figure 2, item 65, column 3, lines 16-46), the stream being derived from the signal (Figure 2, column 3, lines 16-46, column 4, lines 10-18, stream 65 is derived from the signal transmitted to the headend from master files via link 34) and originating from a user selected playback point in the buffered storage queue (column 3, lines 16-46, column 5, lines 9-12, playback point can be selected by fast forwarding or reversing video in the buffer).

The examiner indicates that Atalla fails to disclose a communication system including a headend which sends programming to a plurality of hubs with each hub sending the programming to at least one node that distributes the programming to end users. So, the examiner turns to Lawrence for a recognition of the problem of signal attenuation over long distances and a teaching of using hubs and nodes equipped with amplifiers to remedy the problem (column 2, lines 12-32 and column 4, lines 30-48).

The examiner concludes that it would have been obvious to include hubs and nodes equipped with amplifiers in the transmission system of Atalla in order to reduce signal attenuation and provide a higher quality signal for the end user.

For their part, appellants do not argue the combinability of the references or any error on the examiner's part in employing the nodes and hubs of Lawrence in Atalla. Rather, appellants argue only that Atalla fails to describe or suggest that the buffered storage queue is located at the headend and that the stream is transmitted from the headend, with the stream originating from the user selected playback point in the buffered storage queue. In fact, appellants' position seems to stem from appellants' assertion that the headend in Atalla is the Master File/Host, element 11 in Figure 1.

However, the examiner asserts that because a headend, as defined by appellants' specification, at page 7, lines 20-23, is merely something that "receives programming information from a variety of sources...," the community systems 10 of Atalla meet this definition and each

Appeal No. 2002-2127
Application No. 09/378,674

community system 10 in Atalla may be considered to be a “headend.” As appellants offer no alternative definition and this seems consistent with the explanation in appellants’ own specification, we agree with the examiner that each community system element 10 in Atalla is a “headend,” as broadly claimed.

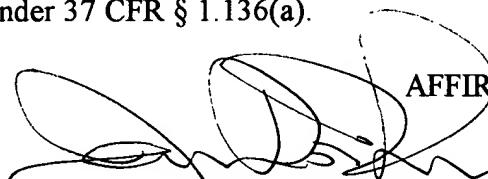
That being the case, it is clear that each community system comprises a buffered storage queue 52. The streams are transmitted to customers from the community system, or headend and the streams originate from a user selected playback point in the buffered storage queue because the customer makes the decision as to what to watch by, for example, downloading a program or fast-forwarding or reversing a video being viewed.

Since we have responded to all of the arguments presented by appellants, finding ourselves in full agreement with the examiner’s position, and appellants have not convinced us of nonobviousness of the claimed invention, we will sustain the rejection of claims 11-16 and 18 under 35 U.S.C. §103.

Appeal No. 2002-2127
Application No. 09/378,674

The examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).


AFFIRMED
JAMES D. THOMAS
Administrative Patent Judge

KENNETH W. HAIRSTON
Administrative Patent Judge

ERROL A. KRASS
Administrative Patent Judge

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Appeal No. 2002-2127
Application No. 09/378,674

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